

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
APRIL 28, 2004**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, April 28, 2004 in the City Council Chamber of the Melvin Municipal Office Building, City of Greensboro, North Carolina, commencing at 2:03 p.m. The following members were present: Chairman Donnie Sparrow, Joyce Lewis, Marshall Tuck, John Cross, Peter Kauber and Hugh Holston. Bill Ruska, Zoning Administrator, and Terry Wood, Esq., Deputy City Attorney, were also present.

Chairman Sparrow called the meeting to order, and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method for appealing any ruling made by the Board. Chairman Sparrow also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

Mr. Ruska was sworn in as to all testimony to be given by him at this meeting.

APPROVAL OF MINUTES OF LAST MEETING

Changes were made in the March 22, 2004 minutes as follows:

Page 12, paragraph 5, lines 1 & 2: "seeing that door, appealing the decision for the door and" should be eliminated and "in which" shall be added.

Page 13, first full paragraph, line 11, "although" shall be eliminated and replaced with "even if."

Page 13, last paragraph, line 9, "here it's" shall be eliminated; "that projects do not" shall now read: "that projects that do not."

Mr. Kauber moved approval of the March 22, 2004 minutes as amended, seconded by Ms. Lewis. The Board voted 5-0-1 in favor of the motion. (Ayes: Lewis, Holston, Kauber, Tuck, Cross. Nays: None. Abstain: Sparrow.)

NEW BUSINESS**VARIANCE**

- (A) BOA-04-13: 2801 NORTH HAMPTON DRIVE - BARBARA TAYLOR REQUESTS A VARIANCE FROM THE MINIMUM REQUIRED REAR AND SIDE SETBACKS. VIOLATION: AN EXISTING DETACHED CARPORT WITH A STORAGE BAY HAS BEEN ENCLOSED. THE STRUCTURE ENCROACHES 2.39 FEET INTO A 5-FOOT REAR SETBACK AND 1.81 FEET INTO A 5-FOOT SIDE SETBACK. SECTION 30-4-8.2, PRESENT ZONING-RS-9, BS-25, CROSS STREET - ONSLOW DRIVE. (GRANTED)**

Mr. Ruska stated that Barbara Taylor is the owner of a parcel located at 2801 North Hampton Drive. The property is located at the southwestern intersection of North Hampton Drive and Onslow Drive on zoning map block sheet 25 and is zoned RS-9. The applicant is requesting a variance to allow an existing detached carport/storage building that encroaches 2.39 feet into a 5-foot rear setback and 1.81 feet into a side setback requirement to be enclosed. The property contains a single-family dwelling and a detached carport with a storage bay. The carport was constructed in its current location, prior to July 1, 1992, the effective date of the UDO. After construction had begun, on or about February 25, 2004, the zoning office received a complaint from a neighbor that the construction was in process without a building permit. The zoning officer made a site inspection and found the construction was approximately ninety percent complete. At this time, the property owner was issued a Notice of Violation. The applicant has stated that she hired a contractor and he did not know that a building permit was required to enclose the carport. Section 30-4-11.3(B)(1) states: "No nonconforming structure may be enlarged or altered in any way which increases its dimensional deficiencies; however, any nonconforming structure or portion thereof may be altered to decrease its dimensional deficiencies. Any enlargement of the structure shall conform to the current dimensional requirements unless a variance is granted by the Board of Adjustment." The adjacent properties located to the west, south, and on the north and east side of North Hampton Drive are also zoned RS-9.

Chairman Sparrow asked if there was anyone present who wished to speak in favor of this request.

Barbara G. Taylor, 2801 North Hampton Drive, was sworn in, and as has been stated, her home is located at the corner of Onslow and North Hampton Drive. She presented to the Board two handouts, which she said she hoped would simplify matters for the Board members. She said the home was built in 1966 and the carport-garage was added in 1986. She purchased the property in November 2003. After she wrote the contract, she noticed that many homes in the area had signs in the front that indicated they had a security system. She called Crime Analysis and got the prime report for the year 2003. Noticing that there been a lot of vandalism and some break-ins in the area, it concerned her. So the first

thing she did after getting the keys to the house was to install a good security system. She indicated that everything she had done to this property or ever would do to this property was and will be done with three things in mind, safety, privacy and aesthetics.

Aside from installing the security system, she had three large trees removed from her lot, two of which were hanging directly over her house, and the third one was enormous and a strong straight-line wind could have snapped it and injured not only her property, but also the property behind her. She also wanted the trees taken down as prevention from having the root system invade the foundation of her house. Secondly, she wanted to enclose the carport for the simple reason, as can be seen on the Crime Analysis Report, that she felt enclosing the carport would be a safety feature for her, especially since she was a widow and lived alone. It would lessen the chance of vandalism at her home as well as in the immediate area. She also wanted to fence a small area behind her house for privacy as well as for safety on this corner lot.

At the time the carport was built, it complied with all ordinances and a building permit was obtained. In 1992 the ordinances changed and the setbacks changed. She was unaware of this, being a new resident of Greensboro. She advised her adjoining neighbors as far back as November 2003 that she intended to enclose the carport and no one seemed to take issue with it at the time. She said she did not give setbacks a thought because the building was there and it had been there for 18 years. She did, however, think about a building permit and called her builder, Derek Shoe with Home Fixers and specifically asked him if they needed a building permit. He said they were not changing the footprint, it already had a knee wall on the back and on the right, and a storage room on the left and that so much of the building was already there and had been there that he didn't think it was necessary. She said Mr. Shoe would speak to this later. In defense of Home Fixers, Derek and Del Shoe are honest, hardworking, young men who do a good job and take pride in their work. She felt that their failure to obtain a building permit was an honest mistake and the fact that they are in this room today would be a good indication to her at least that they were not trying to violate any ordinance nor was she.

She had tried to enhance and improve the property. She intended to be a good neighbor. The fence was put up so that the attractive side was to the outside. She referred to a page of the handout, it is not obvious on the picture, but she had angled the fence so that it was not at a 90 degree angle because she thought it was far more attractive from the street. She said she would be glad to share the landscape plan, although the plan was not what she was trying to emphasize, it was the fence, which was for privacy and aesthetics.

Regarding the carport, the hardship would be to try to relocate this structure. She had an existing driveway, an existing carport with foundation, roof, storage room, knee wall, electrical wiring so to relocate would possibly mean more concrete foundation to be poured and the whole thing would have to be redone. So that would be the hardship. To proceed with the existing structure as it has stood for 18 years seemed the most reasonable way to proceed with this property. The encroachment has not been increased by enclosing the two

walls and adding the garage door. Her intent was to make this a very attractive building. There was a window on the Onslow side, so she added a window on the right side and she intended, if possible, to put shutters on these windows and plant flowers around them to make it attractive. To the left of the garage door, it was her intention to put a wrought iron trellis with Clematis growing up the side. She also believed that what she had done was in harmony, in spirit and in character with what is already in the neighborhood. She had 14 certified letters in support of her being granted the variance, which she handed up to the Board.

Board members pointed out that Section 30-4-11.3(B)(1) talks about enlarging or altering in anyway that increases the dimension deficiencies. In what sense has there been an increase in deficiencies?

Mr. Ruska responded that in the sense that you are increasing the volume of the enclosed structure. This was similar to some of the porch cases that the Board hears where somebody has an open porch and they wish to enclose that, but the porch is already in the setback. He said the dimension has not been increased as far as the setback lines, but the volume has been increased.

Mr. Tuck said the way he looked at this was when you are measuring, and we considered this last month for the house on Friendly Avenue that was too close to the setback, it was the closest point wherever that vertical surface was, whether it was a 2 foot knee wall or a 200 foot high wall. It was that horizontal distance from the ground or the closest spot to the sideline, so he didn't see where a height, unless there was a height restriction that has been violated, would matter. He said the building did not move any closer to the property line. The eave was still there and the eave was probably closer than the vertical wall, so whether its 2 feet or 10 feet, it hadn't moved any closer to the property line. In other words, the wall is no closer today than it was when built 18 years ago.

Mr. Ruska said they had dealt with these the same way for many years now. What Ms. Taylor is doing is increased it from a volume standpoint and from the philosophy of a non-conforming structure, it is supposed to go out of existence. So essentially, what you are doing by increasing that volume of the structure was that you were making it more permanent.

In response to a question from Chairman Sparrow, Mr. Ruska said the side setback requirements were from 1992. The previous requirement had been 3 feet for a detached accessory building on any interior property line and that was increased in 1992 to 5 feet.

Mr. Cross asked if you could get grandfathered in by having a building permit under the old rules prior to 1992?

Counsel Wood said you were vested as to what was built and none of us know what was on this building permit. But even if the building permit had included a wall and it had not been built and the building permit had expired and the rules had changed, the wall could not be built.

In response to a question from Mr. Kauber, Ms. Taylor said his question as to whether or not the height had changed, she was going to have Mr. Shoe answer that question. However, the height had not increased. There is the gable roof on the front and back and the enclosed structure on the left.

Mr. Kauber asked how had the volume changed? He was still having trouble understanding that. The height was there before and the encroachment, as far as the setbacks are concerned, has not changed. How is volume measured?

Mr. Ruska said you have increased the amount of enclosed space.

In response to a question from Mr. Holston, Mr. Ruska said there was no restriction on improving a structure, except as such improvements would violate the Section quoted. In this instance, it was the increased volume. If this had been known by the applicant prior to doing that, she could have been here before the Board before anything was done, asking for a variance in order to enclose it.

Mr. Holston said that looking at this as an improvement, does the ordinance disallow improvements to non-conforming structures?

Mr. Ruska said of this type it would, yes.

Mr. Cross added the type that would normally require a building permit.

Ms. Lewis said her memory was that they had had other situations like this, particularly in older neighborhoods. They traditionally are the ones that she votes in favor of the person requesting the variance because it really hasn't changed a great deal; it has enclosed it. That was really the only difference she saw.

Delton Shoe, 3033 Beckerdite Road, Sophia, NC, was sworn in and said on page 3, picture B, of the handout, you could see the right side wall. Originally, there were 4X4 posts that ran from the roof system down to the brick wall. All they did was frame up the 2X4s in between it, run their sheeting or vinyl and put the window in. The reason they did not pull a permit was because it was not structural, as far as holding the building up. What was in there holding it for the last 18 years remains in there. All they did was give something to nail the vinyl to. So they didn't pull a permit because it was not structural. They had been told in the past that if it was not structural, they didn't have to have a building permit. A fence doesn't require a building permit. As he had said, this structure existed, the roof never changed and the foundation never changed; they just filled in between them. Their understanding of the

ordinance was that they could not increase the size of it. They didn't increase the size of the building; they just put a wall up. That was why they did not pull a building permit, which was why they did not find out about the encroachment and that was why they were here today in support of a nearly complete building rather than coming before you before the building started.

David Cunningham, 1106 Onslow Drive, was sworn in and stated he didn't understand all of this. He had been living there for 17 years and since he met this lady who just bought the subject property, she had been very nice. The neighbor behind her has been also very nice. He didn't see anything wrong with what she did to her garage. He remembered the building being there and the only thing they did was enclosed the open part. He thought it enhanced the property. More than that, he wanted to say they were both of his neighbors and he would like to see this resolved in a peaceful manner. He didn't want to see any conflict after this. He thought they should just try to live together. If someone does something that perhaps is not agreeable to them, then they sometimes should just bend a little and try to let things be as it is. He didn't see anything she did that would detract from the neighborhood; he thought she upgraded it. He had been and looked at her back yard and it was beautiful. The landscaping on his side of the fence is beautiful. Personally he didn't see anything that would offend him from where he lived or see anything that's not done to make the neighborhood look bad, he didn't see it.

Claude Shankle, 1200 Onslow Drive, was sworn in and said this was a wonderful neighborhood. He said all he could say was he didn't know the legal ramifications of all this stuff, variances and so forth, but she was having a good job done by these two guys who talked. She was a good neighbor. He didn't see any problem. She was doing great and they were very proud to be her neighbor.

Chairman Sparrow asked if there was anyone who wished to speak in opposition to this request.

Jean Simler, 1105 Onslow Drive, was sworn in and presented some handouts for the Board's consideration. She said the handouts were photos of her house and the garage and also a picture of the carport that was there before the garage. She said zoning regulations come about to protect the value of neighborhoods and prevent businesses, homeowners, realtors, contractors and builders from changing the character of the neighborhood. They protect the way a neighborhood was designed. This matter has caused her great stress. When Ms. Taylor moved into the house next to hers, she liked her and expected them to be good neighbors and even friends. Unfortunately, things have turned around. She didn't think this was just between her neighbor and herself, she believed it was between her neighbor, a builder and herself. She expects her builder may have as much at stake in this matter. He has constructed a 26 foot wide garage without obtaining a permit or the necessary variance. She expects that if he did not inform Ms. Taylor of the need for a permit and variance, he may be liable to her. If builders, contractors and the general public can pick and choose which codes, regulations and laws they want to observe, why have them? Codes and laws

have been written carefully to protect everyone. They should not be arbitrarily observed. Most homeowners would be mindful of regulations when making improvements to their property. They show prudence when buying their homes by having inspections and surveys done before making their purchase. They obtain needed permits and variances before beginning projects. Had a survey been completed before her neighbor's garage was built, it would have shown a variance was necessary. She had wondered if this was not an oversight, but by design so her neighbor would not have a builder see a survey, but built on her word. Did the builder not want a survey? She didn't know the answer to this question.

She did know this structure is an eyesore. From her kitchen window, her back porch, her backyard or driveway, it is an eyesore. When the sun shines on the white vinyl of the back of this 26 foot wide structure, the glare is blinding. The rest of the time it is only ugly. When the sun shines on the vinyl, she cannot work at her kitchen sink or the counter by the window without closing her blinds. In the summertime, the heat that will radiate from this structure will be very great. Ms. Taylor is a previous homeowner. She believed Ms. Taylor was an intelligent woman. She had told Ms. Simler she had previously remodeled two homes she lived in so she would expect that Ms. Taylor knows what is involved in remodeling and in building on her property. She expected every city has some regulations and regulations are not new to her. They certainly are not new to builders. Had she thought by not having a survey and by the builder not getting a permit she found a way around regulations, did she make a mistake or is she cunning and conniving, she did not know. Builders know when permits are required and to not seek to obtain the permit upon completion of their work.

As she understood, the permit for building the garage at 2801 North Hampton Drive was applied for March 1, 2004. That is after the garage was built. She further understood it is still pending. Without waiting for the outcome of this hearing today, Ms. Taylor has gone ahead with the building of the fence to abut the back of her garage. The posts for the fence were set on March 19th. The fence now appears to be completed and it has given her the impression Ms. Taylor believes an outcome will naturally be in her favor and she will not have to do anything about the structure. She now needs to build a high fence that she never wanted and should have the guide wires for the Duke Power, the cable company and the telephone company relocated, expenses she was not anticipating. Duke Power has advised her the cost will be over \$500 to move their guide wires only 14 inches, but the guide wires from the telephone company and the cable company also involved, she did not know what she would do.

It was while obtaining information regarding the height of the fence she would be allowed that she found out the garage was built without regard to the building code. She was then informed a variance and a permit had not been obtained for this garage. She was relying upon Greensboro's codes and regulations and the Greensboro Board of Adjustment to protect her from the structure that will be a nuisance and detract from the appearance and the value of her property. The code not to build within 5 feet of a property line was not arbitrarily come upon. She did not believe a permit should be granted for this structure. She

thanked the Board for its time and consideration. She said she would like to say too that she was also a single woman and she was concerned about security as well.

Mr. Kauber said he would just do a "for instance" here. Let's say that the current structure was torn down and the whole thing was moved back a couple of feet. It sounds to him as if the same situation could arise perfectly legally, that is you could end up with a structure that did not satisfy her in terms of its appearance, in terms of the color and the sheen of the paint blinding her, etc., etc., so he was trying to see what the difference would be between this case and if they started over and did it legally. What would that difference be?

Ms. Simler said that could well be true. A few years ago she was remodeling her kitchen and before she began, while she was making plans, she had asked if she would be able to build a garage attached to her house. She was told that it was too close an area; she couldn't do it. One builder told her she might be able to do it if she got a variance from her neighbor, but he said it would be very close. This structure is very close to her property, as you can see from the photos that she handed up. The code says 5 feet and that's why she was here.

Chairman Sparrow said the Board would allow just a brief amount of rebuttal, if someone wanted to do any rebuttal.

Mr. Shoe returned to the podium and said Ms. Simler said they built this 24 foot monster - they did not. They put two sides on it. He would like to be able to approach the Board with a picture so that he could show them what they did. He pointed out the back of the garage.

Chairman Sparrow said these were new photos so Ms. Simler should have an opportunity to look at them.

Ms. Simler came forward and looked at the new photographs.

Mr. Shoe said the gable end existed; that was already there and in white vinyl. From where this steps down, there is a storage building. He pointed out an area across the back that was the storage area in the front and it was the same size in the back. All they did was come straight up and straight across with the vinyl and installed that window. He pointed out where there was already white vinyl on the back of it up her driveway. She could see through to see a vehicle parked in it or no vehicle parked in it. The only thing that was changed was that she could no longer see the back of it.

Mr. Shoe said this was completely different. There was fence that ran along her driveway, in between this building and her driveway. This lady paid them to tear that fence down while they were over there doing the work on this garage. So they removed the fence for Ms. Simler.

Chairman Sparrow allowed Ms. Simler to speak briefly about the fence.

Ms. Simler said she had taken down the fence after seeing the back of the garage completed. It overwhelmed the fence that was there. This was a privacy fence. She had a number of fence companies or fence people come in to give her prices on the fence that she would want to have built after taking this down to try to cover more of the building she was looking at. They gave her some prices. While these fellows were there, she asked them what they would charge to take down the fence. She agreed to their price of \$100 and they took the fence down. She is now waiting to have another fence put in.

Mr. Kauber commented that certainly he was sympathetic to both positions. He did feel and he had stated this before that he did not think they should use a variance to solve a problem that would appropriately be solved by the police so he was tempted to not consider the safety issue here. He said it was not that he was not concerned about safety, but he thought that kind of problem needs to be solved in a different way.

Ms. Lewis said, just for information, this was a neighborhood that she lived in until 1990, probably a block from Ms. Taylor. That particular section of Guilford Hills has got both carports and garages scattered throughout. A lot of the garages are very close, as are carports, to other property lines. So she would think that this is an area of town where a lot of existing structures do not meet the ordinance anymore since it was changed in 1992.

Mr. Cross said he didn't think anybody was disagreeing that this variance would be in harmony with the neighborhood and other structures that are there. But he guessed the problem Mr. Kauber was having was the reasonable use standard, which he thought was a problem. He asked if they could say that she should be entitled to the variance under the reasonable use standard, but then at the same time, Mr. Tuck had a good point about the 30-4-11.3(B(1)) issue, whether they have increased dimensional deficiencies.

Mr. Tuck said he would echo all those comments. He thought if the Board had had this case prior to construction, reading the item 7 on the Zoning Administrator's statement of findings of fact, he probably would have voted for the variance because no dimensional deficiency has been increased as far as the 5 foot building setback line.

Mr. Cross asked if the problem here was the original setback requirement? Is the violation here the original setback requirement as opposed to the Section 30-4-11.3?

Mr. Ruska said in 1992, this structure was made non-conforming by the passage of the Unified Development Ordinance.

Mr. Cross said the fact that it was an alteration brings us automatically within Section 30-4-11.3? Mr. Ruska having responded in the affirmative, Mr. Cross said then that was the provision they had to consider.

Chairman Sparrow said on that point, just a comment from the Chair, he thought any

governmental authority has the obligation to be precise enough in the language that it uses to regulate our citizens so that any ordinary citizen can read and understand and appreciate the impact of what it is it's saying. He was reading 30-4-11.3(B(1) and he had to really get himself a word stretcher to figure out that it also means volume. So if an ordinary citizen says, "Well, it's sitting at the same place, does that increase its dimensions?" He said that seems to be what it prohibits now. He knew that it had been interpreted that way. He said he remembered many porch cases that they had done over the years, but he was struggling. If you are going to regulate somebody, you better tell them exactly what it is you're going to do and he didn't think this particular provision gives sufficient notice that the volume of the structure is to be taken into consideration.

Mr. Ruska said the only thing he could say to that was that this language has not changed since July 1, 1992 and that many different Boards of Adjustment here in Greensboro since that time have been dealing with this very same type of issue.

Chairman Sparrow said there were arguments that the Constitution says different things as well and that was written many, many years ago.

Mr. Cross said he could understand the purpose of this being that you don't make non-conforming structures more permanent by permitting them to be changed so that they become more permanent. However, on the other hand, if you are not enlarging it and it's not becoming more of a non-conforming structure and it's being improved, aesthetically and otherwise to where it is a better structure, it seemed like the intent of that, just like you can reduce it, it's an improvement to the existing situation.

Mr. Tuck said in BOA-03-13, 2801 NorthHampton Drive, he would like to include the Zoning Administrator's 8 statements of findings of fact and based on those findings, he moved the Zoning Enforcement Officer be overruled and the variance granted based on the following: that there are practical difficulties in that the structure was built prior to the 1992 Unified Development Ordinance and after that the setbacks became greater and were enlarged to 5 feet; that based on Section 30-4-11.3(B(1) the encroachment was made larger than it was prior to the improvements to the structure and that the hardship is not a result of the applicant's own actions because she did not build the original structure; that the construction that is in process is not affected by the dimensional deficiency; and that the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and that there are no public safety or welfare issue; seconded by Ms. Lewis. The Board voted 5-1 in favor of the motion. (Ayes: Sparrow, Lewis, Holston, Lewis, Tuck, Cross. Nays: Kauber.)

Chairman Sparrow said the following two requests would be consolidated for evidence, but would have separate votes taken.

**(B) BOA-04-15: 3703-3711 LAWNDAL DRIVE - G.H.K. DEVELOPMENTS, INC.
REQUESTS A VARIANCE FROM THE MINIMUM SETBACK REQUIREMENT**

FROM A MAJOR THOROUGHFARE. VIOLATION: A CORNER OF A PROPOSED BUILDING IS REQUIRED TO BE 50 FEET FROM THE PROPERTY LINE OR 95 FEET FROM THE CENTERLINE, (WHICHEVER IS GREATER). THE BUILDING IS PROPOSED TO ENCROACH 28.1 FEET INTO A 95 FOOT CENTERLINE SETBACK. TABLE 30-4-6-5, PRESENT ZONING-HB, BS-84, CROSS STREET - PISGAH CHURCH ROAD. (GRANTED)

Mr. Ruska said that G.H.K. Developments, Inc. is the applicant for the property located at 3703-3711 Lawndale Drive. The lot is located at the northwestern intersection of Lawndale Drive and Pisgah Church Road on zoning map block sheet 84 and is zoned HB. The applicant is requesting a variance from a major thoroughfare setback requirement. A corner of a proposed drugstore building is required to be 50 feet from the property line or 95 feet from the centerline, (whichever is greater). The centerline setback of 65 (62.5????) feet is greater. A triangular corner of the building is proposed to encroach 28.1 (25.7????) feet into the 95-foot centerline setback. Lawndale Drive is classified as a major thoroughfare. This portion of Lawndale Drive has a sixty-five foot dedicated right-of-way. A typical major thoroughfare would have eighty to one hundred feet minimum width for dedication. The lot is unique in shape and is surrounded by three streets. The structure must meet minimum setbacks adjacent to a major thoroughfare, a minor thoroughfare, and a collector street. The major and minor thoroughfare setbacks are more restrictive than collector street setback requirements. The property located to the north is zoned HB, the property located on the eastern side of Lawndale Drive is zoned HB and CD-HB, the property located on the south side of Pisgah Church Road is zoned CD-GO-M, and the property located on the western side of Martinsville Road is zoned RS-9.

(C) BOA-04-16: 3703-3711 LAWNDAL E DRIVE - G.H.K. DEVELOPMENTS, INC. REQUESTS A VARIANCE FROM THE MINIMUM REQUIRED STREET SETBACK. VIOLATION: A PROPOSED DRIVE-THRU CANOPY WILL ENCROACH 6 FEET INTO A 30-FOOT STREET SETBACK ADJACENT TO MARTINSVILLE ROAD. TABLE 30-4-6-5, PRESENT ZONING-HB, BS-84, CROSS STREET - PISGAH CHURCH ROAD. (GRANTED)

The applicant is requesting a variance from a minimum required street setback for a proposed drive-thru canopy to encroach 6 feet into a 30-foot street setback adjacent to Martinsville Road. The lot is unique in shape and is surrounded by three streets. The structure must meet minimum setbacks adjacent to a major thoroughfare, a minor thoroughfare, and a collector street. The major and minor thoroughfare setbacks are more restrictive than collector street setback requirements. The canopy will be attached to a proposed retail drugstore. The applicant has stated that this proposed design is the least intrusive encroachment into required setbacks for this site.

Chairman Sparrow asked if there was anyone present who wished to speak in support of these requests.

Brian Byrd, Esq., 300 North Greene Street, was sworn in and stated that he represented G.H.K. Developments, which is a developer of Walgreen Drugstores based in New Orleans, Louisiana. G.H.K. develops drugstores in Louisiana, Alabama, North Carolina and Virginia and this will be G.H.K.'s sixth Walgreen Drugstore in the triad, with several others planned. He said he would first present some general information about this site and then address the variance requests, one at a time.

Mr. Byrd handed up information for the Board's consideration with reference to the first variance, BOA-04-15.

He said this site consisted of two tracts, Tax Map No. 2 and 12 that the Board could see on the tax map provided; the site was highlighted in yellow. This site has severe dimensional limitations and challenges, which he described as follows: The site is bordered on 3 sides by streets; it tapers from about 314 feet on the southern boundary to about 120 feet on the northern boundary. Then if you take that triangular shape of property and apply the minimum street setbacks on the 3 sides, and those setbacks are as set forth by Mr. Ruska. When their application was initially submitted, they had some misinformation about what the setback was on Lawndale or they misinterpreted what the setback was. The Board may have read his remarks in the application and saw references to a 50 foot setback on Lawndale. Because Lawndale is unusually narrow at this point, the applicable setback is 95 feet from the centerline. Then you have the interior setback from the adjacent dry-cleaning property, which is shown on the Tax Map as Lot No. 14, and that setback is 10 feet from the property line. He said on the next page of the handout, he had color coded the proposed site plan. He said the portion colored in yellow was the buildable area on the property when all the different setbacks were taken into consideration. The gross area of the property was about 68,068 square feet. Of that original area, only 33,800 square feet remains after the minimum street setbacks are applied. The shape of the buildable area is almost triangular and tapers to about a 30 foot width at the northernmost portion of the property.

He addressed the findings that Board would have to make to grant the first requested variance. If this particular site is to be redeveloped into a viable use, some flexibility will be required simply because of its unique shape and the setbacks on the 3 sides facing the street. The EXXON station that was formerly located on Tract 12 is now vacant and, as far as they are aware, there is no other proposed use for that property. They believe that any future use that is made of these two sites combined will require some flexibility, again just because of the unique shape and character of the property.

G.H.K. has considered alternatives to requesting a variance, shifting the building a little. Essentially they would solve one problem and then create another. He said in his mind, the primary purposes of setback requirements are 1) to preserve a uniformity of appearance and 2) to prevent improvements from being built in a manner that would endanger

motorists. In terms of the uniformity of appearance, he directed the Board to the first picture behind the colored site plan. He said this was a picture of the building on the property

adjacent to this site, the Cleaner World dry-cleaning business. This particular building is about 28.5 feet from the property line and about 61 feet from the Lawndale centerline. Their proposed improvements would set back further, both from the property line and centerline than the adjoining building. Also he pointed out that of the approximately 14,500 square feet of the proposed building, only 705 square feet of the proposed building will lie within the setback and only about 45 feet approximately of the 150 foot front building line will be within the setback.

In terms of safety considerations, he pointed out that the area of an encroachment is at least 200 feet northwest of the signalized intersection of Lawndale and Pisgah Church Road. He directed the Board to a picture taken from the intersection of Lawndale Drive and Pisgah Church Road. The reason he wanted to show this to the Board was it shows how Lawndale Drive bends to the northwest at this point, which means that the building will sit back from the Lawndale-Pisgah Church intersection and the encroachment will not impair the line of sight down Lawndale Drive from the Pisgah Church and Lawndale Drive intersection. Prior to filing for this variance, they also met with GDOT and confirmed that they had no objections in terms of line of sight or other safety considerations to the variance.

In response to a question from Chairman Sparrow, Mr. Byrd said there was an existing Bank of America freestanding ATM site north on Lawndale, but that would not be incorporated into this site. They will tear it down.

Mr. Kauber asked Mr. Byrd to elaborate on the options that they looked at. He had mentioned parking and Mr. Kauber said he would like to get an elaboration on that also. Whenever he saw a situation like this, the parking has a lot more flexibility in terms of setbacks so you try to figure out a way to put your building where it has to be and put the parking every place else. Mr. Kauber said Mr. Byrd had said it had something to do with impervious surfaces and, therefore, limitations on parking. He asked Mr. Byrd to elaborate on that.

Mr. Byrd said essentially the ordinance said that if they redevelop this site, they can redevelop it with an impervious surface area that is equivalent to what is there now. They could put more impervious surface on the site, but there would be significant modifications required to the drainage system, probably some type of on-site detention system that, frankly, makes the project unfeasible. If they attempt to shift the building to the south, there are 9 parking spaces striped on the southern end of the building. They lose those. Also if they shift the building to the south, it disrupts the flow of traffic around the property because you have folks coming in there off of Martinsville Road into that first curb cut there and, essentially, they will be turning right into the building. So they have considered alternatives in terms of the placement of the building to avoid that encroachment and it is just not feasible in terms of making the site work.

Mr. Kauber said getting back to the parking, Mr. Byrd had said they could increase the impervious surface area, but it would require other things, such as a retention pond; is that correct?

Mr. Byrd responded that it was.

Mr. Kauber said it sounded like a financial issue to him.

Mr. Byrd said not necessarily, because also if you look at this site in terms of how the parking is laid out, there is not a lot of room to spread there. There is a little green space there in the corner at the intersection of Lawndale-Pisgah Church Road. He said it would be impossible to utilize that area for parking space and still preserve the flow around the site.

In response to another question from Mr. Kauber, Mr. Byrd said he guessed they could consider a smaller building by lopping off that corner there. They could put a fruit stand here. It all comes down to what is a reasonable use of this property. They could do a lot of other things on this property physically. It is a question of what is reasonable, considering the location of the property, the value of the property and Mr. Kauber had mentioned financial. He said he knew some folks were under the impression that Boards of Adjustment could not consider financial matters. He said the Board could not consider increased profits, but he thought they could consider the value of this property as a commercial tract and what is considered a reasonable use of that tract. It would not be reasonable to expect them to put a small residence there and, in his opinion, a fruit stand or a commercial building that is sized in a manner or located in a manner that would probably not succeed as a going concern.

Mr. Kauber said what he was getting at was, and he guessed it was time to make it clear, in the new world of Connections 2025, the City is being asked to be more flexible, for example, mixed use in areas that have been districts that allowed single use zoning. The public is being asked to become more flexible, for example, allowing high density residential in areas that were originally low density residential. He thought it was also reasonable to ask businesses to be flexible. Maybe if they are thinking about putting a business on a piece of property that is oddly shaped, that you have to start thinking out of the rectangular box and starting to think, "Could I do a wedge shaped or could I do a smaller building?" That really was what was behind his questions.

Mr. Byrd said he understood that consideration and he did not disagree with that. He did not think it dictates an adverse result in this particular case. This is a very challenging site. They have been working on this site for a year and a half now. He thought this was a good adaptive use of this particular site. They have overcome lots of challenges that face this site. They are not walking in here saying, "This is what we want and we are not willing to budge." He said this is what they have come up with after reviewing lots of site plans, talking with Walgreen about what works in terms of traffic flow around the site, site design and so

forth. So he didn't think they had been inflexible. He thought they had made a great effort to avoid seeking a variance and when it became evident that they were going to have to seek a variance, they made a great effort to minimize the variance that they had requested.

Mr. Holston asked how was this Walgreen sized in comparison to the others here in the triad or in the other states in which you've built?

Mr. Byrd said he thought this one was about 300 square feet smaller than the one at Spring Garden and Market and the one at Holden and Market. He said Walgreen buildings typically from 14,500 to 15,500 square feet.

Mr. Tuck said he noted they had 10 more parking spaces than were required. He knew they would be nice to have, but what if they reduced the site by the 10 spaces, rotated the building around to get it on there and you got rid of the need for the variance along Lawndale?

Mr. Byrd asked how did he mean, "rotate the building?"

Mr. Tuck said you would actually turn it more east somewhat where you would take the building and twist the front entrance closer to Lawndale? That side of the building, the short side with the 9 parking spaces, is more parallel to Pisgah Church and if you pulled the building forward, you could get your parking and your building in that same distance that you have. You might lose some of the parking along the north side, but you will still have a driveway through for your trash trucks and circular flow for your drive-in.

Mr. Byrd said if you rotate the southern portion of the building northeast, you are going to pull the northwest corner of the building, probably into the Martinsville Road setback.

Mr. Tuck said that they could pull the building closer to Pisgah Church and still stay outside the landscape yard, the dotted line that appears to be 10 feet or less from the right-of-way of Pisgah Church Road or 8 feet? If you align the parking where it is noted 17 spaces, which is currently along the southern portion of the building, you put that curb line at the 8 foot landscape requirement. So, therefore, you are able to pull the whole building towards Pisgah Church somewhat. And the whole building would fit within their yellow area and the parking would appear to fit within the pink area. You would lose a few spaces, but you've got 10 more than you need.

Mr. Byrd said you would still have problems getting cars through the site, and he was not sure Mr. Tuck's solution works in terms of getting it out of the Lawndale setback to begin with, but assuming that it does, you are going to have cars coming off of Martinsville Road there into that curb cut, directly into the building. GDOT will not let them get any closer to the intersection of Martinsville and Pisgah Church Road; in fact, they are not sure GDOT will let them get that close.

Mr. Tuck said that they already had a curb cut on Martinsville.

Mr. Byrd said it was not that far south.

Chairman Sparrow said he hated to interrupt this discussion, but this was something that should be done on some graph paper and some folks looking at it. He said he meant no offence to Mr. Tuck. Chairman Sparrow said they had to take a look at and vote on what they had in front of them, not what might be.

Mr. Byrd said Chairman Sparrow had said the Board would handle both of them at one time and he didn't know if the Chair wanted him to address the canopy. He also said he had some materials to hand up to the Board for its consideration in connection with the second request. He said since they had already talked about the dimensional limitation on this site, he was just going to go on to the findings of fact that he believed were present that allows the Board to grant the second variance.

Mr. Byrd said again the site was uniquely shaped, it has the three minimum street setbacks with which they have to comply, and they had considered shifting the building around to avoid requesting this variance. Essentially to get the drive-thru canopy out of the encroachment, they have to increase the encroachment on the Lawndale side. They also think that reconfiguring the location of the building, shifting it to the east in order to get out of the encroachment, interferes with the drive aisles and circulation of traffic around the site. The hardship arises from the unique circumstances related to the applicant's property. As mentioned before, the site is almost triangular in shape and tapers to a very narrow point and has a very unusually shaped buildable area.

The hardship arises from the application of the ordinance for the minimum setbacks to this property. The hardship is not the result of the applicant's own actions since the boundaries cannot be changed. The property is what it is. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. He said the first photo in the handout is a picture of the drive-thru canopy on the Spring Garden and Market Street Walgreen site. As you see, it is not an enclosed structure. You can see through the structure there. He pointed out that gas station and convenience store canopies are permitted within the street setback as long as they are at least 15 feet from the right-of-way. So if they put a gas pump here, they would be okay. The entire enclosed portion of the building on this side of the property will be located within the buildable area and outside the minimum street setback. In terms of uniformity of appearance, he pointed the Board to the final photo in the handout, which is a picture of the Cleaner World Dry-cleaning building. As you can see, it is pretty close to the Martinsville Road right-of-way there. It is the building through the trees there and the corner of the building is just behind that dumpster. According to their surveyor, that building is about 10.5 feet from the right-of-way line.

The granting of the variance assures public safety and welfare and does substantial justice. The area of this particular encroachment is at least 210 feet from the intersection of

Martinsville Road and Pisgah Church Road and approximately 300 feet from the intersection of Martinsville and Lawndale. He said he actually had two more pictures that he wanted to show the Board along Martinsville Road. The third picture here is looking south on Martinsville Road along this site and the final picture is a picture looking north along

Martinsville Road. He simply wanted to demonstrate to the Board that where this canopy will be located would not impair any sight distance down Martinsville Road. They met with GDOT on this particular issue and confirmed they had no objections regarding the placement of the canopy.

Mr. Cross said he had one general question. He said the structure that is on the property is a gas station and has that been vacated already?

Mr. Byrd said yes, he thought it was closed in January and he believed they removed the tanks. They went out of business. He said they entered into an option to purchase this property back in May of 2003. They could not get all of the due diligence issues resolved and their option expired. After their option expired, Lee-Moore Oil Company, which is the owner of the property, apparently decided to close this particular site. They then entered into another option in early February to purchase the site. They have options on both this site and the Bank of America ATM site.

Mr. Cross said he brought that up because he did buy Mr. Byrd's argument that you can consider the commercial nature of the property, its general value to the area and consider the economic uses for which it could be used. If other smaller businesses do not have a track record, then he thought to say there was no reasonable use but for this, is a factor he thought they could go further within their analysis on that point.

Mr. Kauber said that was the point that he was trying to make was that it was demonstrated that that particular use on this site is not going to make it.

Mr. Byrd said after buying two tracks and joining them together, he did not think they could justify a kiosk as the ongoing use for these odd shaped properties from here on out.

Mr. Kauber asked if all Walgreen store were drive-thru pharmacies?

Mr. Byrd said he did not know that. All the ones on which he had represented the developer of Walgreen's Drugstores had drive-thru canopies and he did not know if they had any stores with just drive-thrus with no canopy.

Mr. Kauber asked Mr. Ruska to comment on the fact that no variance would be required if this canopy was for a gas station.

Mr. Ruska said that was something that was done at the time they were working on the Unified Development Ordinance and he thought they realized at that point that there were so many gas station canopies that were so close to the road that they would have

summarily made everything non-conforming if they didn't allow for a number of these canopies to meet a legal setback. The other thing was because of the positioning of gas pumps on property and the fact that the canopy was intended to cover all the gas islands, that was another factor that begged for less of a restriction on the setback for the gas station

canopy.

Mr. Kauber said then if they had had as many Walgreen Pharmacies with canopies as they had gas stations, everything would have been okay.

Mr. Ruska said he thought back in 1992 there was no such thing as a drive-thru pharmacy.

Mr. Cross said in the matter of BOA-04-15, he moved that the Zoning Administrator's findings of fact be included in the record, and based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance granted, based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance due to the following: if the applicant complies with the provisions of the ordinance, it can make no reasonable use of its property because of the nature of the property, its location, its unique shape and the commercial setting in which it is located. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because it is located in the middle of two major thoroughfares and one other street with separate setback requirements, which is unique to properties in general. The hardship results from the application of the ordinance to the property because of the setbacks on each of the streets, again affecting this piece of property. The hardship is not the result of the applicant's own actions because this is the property, this is what is out there; the applicant did nothing to affect this. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit due to the other commercial developments, their nature, there is no danger to ongoing motorists and it is consistent with other setbacks for similar properties in the area. The granting of the variance assures the public safety and welfare and does substantial justice for the same foregoing reasons.

Mr. Tuck asked Mr. Cross if he would add one thing. That the Board did hear testimony from the applicant that they have looked at alternative site plans and that this is the most feasible of the options; this isn't just the first stab at it and it is the only thing that works out of convenience.

Mr. Cross accepted Mr. Tuck's amendment and asked that it be added to his motion.

Mr. Tuck then seconded the motion as amended. The Board voted 6-0 in favor of the motion. (Ayes: Sparrow, Lewis, Holston, Kauber, Tuck, Cross. Nays: None.)

Mr. Kauber said he would like to ask a question of his colleagues and needed some help on the second request. A few months ago, they turned down a request for a canopy. Just to refresh the Board members' memories, it had to do with a dance ballroom where a canopy

already existed and they wanted a bigger one. Clearly there is one difference in this case; there isn't an already existing canopy. But beside that, what was the difference between what the Board is being asked to vote on now and what they were being asked to vote on before?

Chairman Sparrow said, for the record, he voted for the variance. Ms. Lewis said she did also.

Mr. Cross said he could not remember what all went into that case, but he did feel that there was a stronger case made here than in the usual variance due to the fact that the property is unique and that it is the reasonable use standard, based on commercial history of this particular property. He said he did not visit the site for this particular purpose, but he knew it and was familiar with it. So every time he saw it, he was struck by how weird this property is and how unique it is and how difficult it would be to structure something successful on this property. The dance hall was a very standard property that all of the rationale for the canopy was specific to her unique business, that dance hall, because she had older customers coming in and out. She didn't make any argument that the property was unique in any fashion. There were no distinguishing characteristics that were brought forth in comparison to those that are brought out in this case in his opinion.

Ms. Lewis said she would say one of the differences was that for the use of the other property, the canopy would not preclude the building being used. And when you have a drugstore, she thought most people are used to having a drive-thru. So she would say that a drive-thru with a canopy is more important for the usage of a drugstore than a canopy for a dance studio.

Mr. Kauber said his guess was that the prior applicant wouldn't disagree with that analysis. However, he wanted to point out that there were still a lot of pharmacies that do not have drive-thrus.

Mr. Ruska said he thought one of the differences also between the other case was that one of the purposes for the canopy was to allow people to stand around outside and they possibly could have gotten away with a smaller canopy that didn't encroach as far. But one of the reasons they wanted to have it was to protect people standing outside.

Mr. Tuck said that standing around was a policeman so he could stand out and watch. He said he had another question for Mr. Byrd because it was hard to see on the site plan, but this really appears to be a double drive-thru. You can get two cars in there. What would it do or would the canopy be within the setback if there were only a single drive-thru? For instance, if you visit the CVS that he goes to on Cornwallis, there is only car at a time. This one at Market Street, which he had been to also, as well as like the Eckerd's on North Elm Street, you can have two cars, one on either side of the column. What they generally do is you pick up at the drive-thru closest to the building and drop off at the one farthest from the building. But what his experience has been was they only have one clerk working in the

window so you are going to wait, no matter what. So his question is: If they didn't have the outer drive-thru, could you pull the canopy back far enough to be within the setback line, have your drive-thru and not need the second variance and not adversely affect the operations of the business? It looks to be very close on the site plan to achieving that.

Mr. Byrd said he could not tell for certain on this site plan. He thought they might be able to chop the canopy off and leave the second lane uncovered. Again he was not certain, but it appears that is the case. Even if they are able to do that, again he would ask them to look at this in the light of not just this particular use that they were proposing, but any redevelopment of this site was going to require some stretching.

Mr. Tuck said he understood that and in a way he was trying to mediate between the possibility of some dissension on the Board and some acknowledgment that yes, there needs to be stretch. He certainly thought they had stretched on the first one and he was not saying they shouldn't on the second one; he was just trying to say, "What if?" If it got knocked down to approve this variance, is that going to make the deal go away or is that just going to mean they are going to come back and say, "All right, we'll build one drive-thru instead of two?"

Mr. Byrd said that after looking at several site plans, this was what they have said, "This is what you need to get approved." To him that says, "We need a double drive-thru covered with a canopy." But if they went back and said, "If we don't have a double drive-thru with both lanes covered, do you still want to do the deal?" He did not know the answer to that question.

Chairman Sparrow said he did not think the Board was in a position to ponder that issue in that form. He thought the Board would have to vote up or down on what is in front of them.

Mr. Ruska said it looked to him like even if you cut the canopy off to just cover one drive-thru lane, you would still have an encroachment into the setback. It just might be a little smaller.

Ms. Lewis said in the matter of BOA-04-16 and based on the aforementioned findings of fact in BOA-04-15, she moved that the Zoning Enforcement Officer be overruled and the variance granted based on the same practical difficulties and the hardships that have already been mentioned. The hardship is not the result of the applicant's own action because of the shape of the property and use of the building in that customer satisfaction is a key to customer usage and two lanes will serve customers better than one in that it will allow people to move quickly to drop off items and keep going. The variance is in harmony with the general purposes and intent of this ordinance and it preserves its spirit in that it allows a reasonable use of the property to be made and by granting the variance, it assures public safety and welfare and does substantial justice. The motion was seconded by Mr. Holston. The Board voted 4-2 in favor of the motion. (Ayes: Sparrow, Lewis, Holston, Cross. Nays: Kauber, Tuck.)

Chairman Sparrow pointed out that his term ran out in June and he had asked that he not be considered for reappointment, not because he hadn't enjoyed this, but because he had been doing it so long, he thought a fresh face was necessary. He asked Mr. Ruska if he received a copy of his letter?

Mr. Ruska said he did and if City Council is a little slow to make a new appointment, he assumed Mr. Sparrow would be willing to serve until they appointed a new member.

Chairman Sparrow said he would be happy to accommodate Mr. Ruska in that regard.

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There being no further business before the Board, the meeting was adjourned at 3:50 p.m.

Respectfully submitted.

Donnie Sparrow, Chairman
Greensboro Board of Adjustment

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